

1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2
3
4 In the Matter of)

5)
6 Malone People Action Committee - Delegate)
7 and Glenridge A. Pole in his official capacity)
8 as treasurer)
9)

MUR 6858

10
11 **GENERAL COUNSEL'S REPORT # 2**

12
13 **I. ACTIONS RECOMMENDED:**

14 Take no further action with respect to Malone People Action Committee – Delegate and
15 Glenridge A. Pole in his official capacity as treasurer (the “Committee”) and close the file.

16 **II. BACKGROUND**

17 This matter was generated by a Complaint filed with the Commission alleging, among
18 other things, that the Committee, the authorized campaign committee of federal candidate Shawn
19 Michael Malone, used government resources in the form of involuntary prisoner labor to prepare
20 for a campaign event.¹ On June 8, 2017, the Commission found reason to believe that the
21 Committee violated 52 U.S.C. § 30104(a) and (b), provisions of the Federal Election Campaign
22 Act of 1971, as amended (“Act”), for failing to report an in-kind contribution resulting from the
23 use of prisoner labor.² The Office of the General Counsel investigated this allegation, and this
24 report outlines the results.

¹ Compl. at 5 (July 28, 2014).

² Certification, MUR 6858 (June 8, 2017); Factual and Legal Analysis at 4-5, MUR 6858 (June 8, 2017). The Commission took no action at that time as to the remaining allegations in the complaint, which alleged that Malone and the Committee used Malone’s position as President of the Virgin Islands Senate to benefit his federal campaign. *Id.* at 5. The investigation did not produce any information supporting those allegations.

1 Upon receiving notice of the Commission's reason to believe finding, the Committee
2 requested to enter into pre-probable cause conciliation.³ The Committee acknowledged that
3 several prisoners were near the site of the event in question and helped set up the Committee's
4 tent there. However, the Committee maintained that the prisoners acted voluntarily; they were
5 not brought to the site to set up for the event, but were there painting a fire station as part of a
6 work detail and, because they knew the Committee's St. Croix campaign manager, Marcellino
7 Ventura, they volunteered to help him set up a tent.⁴ The Committee denied that the prisoners'
8 efforts resulted in any in-kind contribution to the Committee in the form of involuntary services
9 rendered.

10 **III. INVESTIGATION**

11 The Committee agreed to voluntarily discuss the Complaint's allegations, answer a set of
12 written questions addressing them, and provide sworn statements from Malone and Ventura.⁵
13 During a telephone interview, counsel for the Committee and Malone ("Respondents")
14 represented that the event in question was not a campaign event but instead a horseracing event
15 open to the public, which several local politicians attended.⁶ Respondents indicated that Ventura
16 was the only person from the campaign present to set up for the event, and stated that no
17 campaign staff took any steps to bring inmates to the event, signed any inmates out from a
18 correctional facility, transported any inmates to the site, or gave any inmates any instructions to

³ Letter from Leigh F. Goldman, Esq. to Office of the General Counsel, FEC (Aug. 11, 2017).

⁴ *Id.* at 2.

⁵ We did not receive a sworn statement from either Malone or Ventura.

⁶ Report of Investigation, Telephone Interview with Leigh Goldman, MUR 6858 (May 30, 2018).

1 set up for the event.⁷ Based on the pictures attached to the Complaint, Respondents asserted that
2 only one inmate assisted Ventura, and the inmate did not receive any specific instructions and
3 was not required to remain there.⁸

4 We interviewed Ventura by phone.⁹ Ventura represented that at the time of the event, he
5 had arranged to borrow a large tent from a neighbor, Davidson Charlemagne.¹⁰ Ventura said that
6 when he went to Charlemagne's house and borrowed the tent, Charlemagne was not home, but
7 Charlemagne later came to the event site accompanied by several inmates participating in a
8 community service project. Ventura explained that Charlemagne frequently worked with inmates
9 on such projects. He asserted, however, that he had already erected the Malone campaign tent by
10 the time Charlemagne and the inmates arrived at the event site. Ventura explained that the
11 inmates voluntarily helped another person set up a tent next to the Committee's tent, and
12 contended that the Complainant's pictures, which show the Committee's tent already set up, were
13 being misinterpreted.¹¹

14 We also interviewed Jimmy Warren, an investigator at the Golden Grove Correctional
15 Facility, where the inmates in question were incarcerated at the time of the incident.¹² Warren
16 verbally confirmed that, based on prison records, on December 26, 2013, four inmates were
17 released on a work detail supervised by Davidson Charlemagne to help set up for a large parade

⁷ *Id.*

⁸ *Id.*

⁹ Report of Investigation, Telephone Interview with Marcellino Ventura, MUR 6858 (May 30, 2018). During this phone interview, Mr. Ventura agreed to provide a sworn, written statement of his version of events. However, he did not subsequently provide any written statement.

¹⁰ *Id.*

¹¹ *Id.*

1 held shortly after New Year's Day.¹³ These inmates were Roger Edwards, Rubin Vigilant,
2 Laughton Clark, and Jose Nunez. Warren indicated that Vigilant remained incarcerated at the
3 facility, while the other three had been paroled, and Warren agreed to make Vigilant available to
4 speak with us.¹⁴ Warren provided us with contact information for Edwards; however, he had no
5 contact information for the remaining two inmates. Warren also told us that the former warden
6 of the facility had conducted an informal internal inquiry, and he would try to find and provide us
7 with any records of the inquiry.¹⁵ We did not, however, receive any records.

8 We then interviewed Vigilant, who is still incarcerated at the Golden Grove facility.
9 Vigilant told us that he was on a work detail with three others that day, tasked with painting fire
10 houses around St. Croix.¹⁶ He said that they were picked up from the prison by a fire inspector
11 named Davidson, who had often led these work details; on prior details with Davidson, Vigilant
12 said he had set up tents that had been used for Carnival festivities. Davidson told the inmates
13 they were going to drop off a tent before going to paint the firehouse.¹⁷ However, Vigilant said
14 that when they arrived at the drop-off point by the racetrack, the man they met did not know how
15 to set up the tent. Vigilant said that although he did not know this man, he had seen him in
16 church before, and explained that since the man did not know how to set up the tent and needed
17 help, he felt it was "their Christian duty" to set up the tent before leaving.¹⁸ Vigilant claimed that

12 Report of Investigation, Telephone Interview with Jimmy Warren, MUR 6858 (May 31, 2018).

13 *Id.*

14 *Id.*

15 *Id.*

16 Report of Investigation, Telephone Interview with Rubin Vigilant, MUR 6858 (May 31, 2018).

17 *Id.*

18 *Id.*

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1 the inmates set up only one tent, and they were there no more than fifteen minutes. He
2 acknowledged that he did not know what the tent would used for but assumed, based on its
3 location by the racetrack, that it would be used by those watching the races.¹⁹ He noted that there
4 were other tents set up nearby, but he did not see any that had a "Malone" banner, and he claimed
5 that the inmates did not hang any banners, and had nothing to do with any campaign or
6 election.²⁰

7 In addition, we interviewed Roger Edwards, who was also on the work detail, by phone.
8 Edwards, who is no longer a prisoner, told us that while incarcerated at Golden Grove, he
9 frequently went out on work details sponsored by the local fire department that involved a variety
10 of community service tasks, including cutting grass, painting, picking up trash, or setting up tents
11 for local festivals.²¹ On the day in question, he recalled that the detail supervisor and another
12 man asked the inmates to erect three tents, which they did, although Edwards contended that the
13 inmates did not know what the tents would be used for, and did not hang any banners on the
14 tents.²² Edwards noted that as they were leaving, the other men were putting banners up, one of
15 which was a "Malone" banner. Edwards opined that because a work detail is not a specific set of
16 tasks, but essentially requires the inmates to perform whatever work their supervisor directs, he
17 felt that he did not have the power to refuse a task. But he noted that setting up tents was not an
18 unusual task to be given because he had set up festival tents on numerous prior work details.²³

¹⁹ *Id.*

²⁰ *Id.*

²¹ Report of Investigation, Telephone Interview with Roger Edwards, MUR 6858 (May 31, 2018).

²² *Id.*

²³ *Id.*

1 Finally, we interviewed Davidson Charlemagne, a retired fire marshal with the St. Croix
2 Fire Brigade, by phone. Charlemagne told us that he was the supervisor for a work detail of three
3 or four inmates on December 26, 2013.²⁴ He claimed that he picked up the inmates from the
4 prison, and before starting the work detail, they stopped at the nearby horseracing track because a
5 major racing event was taking place that day. Charlemagne claimed that he was not bringing the
6 inmates to the racetrack to do any work there, but that they were merely passing through, and
7 while they were there, they observed an older man struggling to set up a tent next to the
8 Committee's tent and helped him.²⁵ Charlemagne claimed that this older man — whom he did
9 not know — was the only person the inmates helped to set up a tent, and that when he and the
10 inmates arrived, the Committee's tent had already been set up, although there was no "Malone"
11 banner on it.²⁶

12 Charlemagne confirmed that he had agreed to loan a tent to Ventura for the event and saw
13 Ventura there, adding that as the President of the St. Croix Festival Committee, Charlemagne has
14 many tents and people regularly ask to borrow them for various reasons. Charlemagne
15 acknowledged that there were tents in the van he used to transport the inmates, but claimed that
16 these were to be set up elsewhere on the island for a parade that takes place during the first week
17 of January.²⁷ He claimed that in the five or ten minutes he and the inmates were at the racetrack,
18 it would have been impossible to set up the Committee's tent, which was a larger, professional-

²⁴ Report of Investigation, Telephone Interview with Davidson Charlemagne, MUR 6858 (May 31, 2018).

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

1 grade tent. Charlemagne speculated that this tent would have taken them at least thirty minutes
2 to set up.²⁸

3 **IV. ANALYSIS**

4 Under the Act, a contribution includes "any gift, subscription, loan, advance, or deposit of
5 money or anything of value made by any person for the purpose of influencing any election for
6 Federal office."²⁹ "Anything of value" includes all in-kind contributions, such as "the provision
7 of any goods or services without charge or at a charge that is less than the usual and normal
8 charge for such goods or services."³⁰ Federal candidates and their agents may not solicit, receive,
9 direct, transfer, or spend funds "in connection with an election for Federal office" unless those
10 funds are subject to the Act's reporting requirements, limitations, and prohibitions.³¹ As a
11 United States territory, the Virgin Islands are considered a State under the Act, and a State
12 government is a person subject to the Act's contribution limit, which was \$2,600 in the 2014
13 election cycle.³²

14 The Complaint alleges that the Committee violated the Act by using Virgin
15 Islands government resources, *i.e.*, prisoner labor, in support of Malone's federal campaign. The
16 information uncovered through our investigation does not clearly support the allegation that the
17 Committee benefited from prisoner labor, and instead presents a factual dispute as to whether the

²⁸ *Id.* at 2.

²⁹ 52 U.S.C. § 30101(8)(A)(i) (emphasis added).

³⁰ 11 C.F.R. § 100.52(d)(1).

³¹ 52 U.S.C. § 30125(e)(1); 11 C.F.R. § 300.61. A "candidate" for "federal office" includes a candidate for Delegate to Congress. 52 U.S.C. § 30101(2), (3).

³² 52 U.S.C. § 30101(12); 11 C.F.R. § 100.11; First General Counsel's Report at 4-6, MUR 5135 (George W. Bush); Advisory Op. 1999-07 (Minnesota Secretary of State).

1 inmates on the work detail actually set up a tent for the Committee. Although the two inmates
2 we interviewed both said they erected a tent, their accounts contradict each other on the key issue
3 of whether they were instructed to erect a tent or did so of their own volition: Edwards claims
4 that the inmates were told to set up three tents, while Vigilant says they were there to drop off a
5 single tent and volunteered to help set it up as a charitable act. Moreover, neither inmate could
6 confirm that they set up a tent for the Committee: Both men explained that while on work details,
7 they often set up tents for festivals and parades, but on this occasion, they did not know what the
8 tent would be used for. For their parts, Ventura and Charlemagne deny that the inmates set up a
9 tent for the Committee and claim that the inmates set up a tent for someone else. Ventura claims
10 that he set up the Committee's tent before the inmates arrived. Both Ventura and Charlemagne
11 contend that the inmates erected a tent next to the Committee's tent, which is consistent with
12 what the Complainant's photographs show.

13 Thus, the accounts of the incident do not clearly support the allegation that the
14 Committee received the benefit of compelled prisoner labor to set up for a campaign event, or
15 that Malone improperly sought to take advantage of his position as a senator in the Virgin Islands
16 legislature. We provided two of the inmates with the opportunity to voice their side of the story,
17 and while it is possible they set up a tent used by the Committee, we have not found — nor are
18 likely to discover — evidence that they were compelled to set up a tent for the Committee. As
19 additional investigative effort would be unlikely to further clarify the record, we recommend that
20 the Commission take no further action in this matter, and close the file.


V. **RECOMMENDATIONS**


1. Take no further action against Malone People Action Committee – Delegate and Glenridge A. Pole in his official capacity as treasurer;
2. Approve the appropriate letter; and
3. Close the file.


Lisa J. Stevenson
Acting General Counsel

Kathleen M. Guith
Associate General Counsel for Enforcement

6.13.18
Date


Stephen Gura
Deputy Associate General Counsel
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